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US Department of State, CA/OCS/PRI
Adoption Regulations Docket Room
SA-29
2201C Street, NW
Washington DC 20520

cc Senator Norm Coleman, Senator Mark Dayton, Senator Landrieu, Senator Burr, Office of Advocacy
– US SBA, Office of Advocacy, Minnesota SBA, NC SBA, Office of International Trade, Women's
Business Center

Please read this very important message. It has come to my attention that the rules surrounding inter-country adoptions through the Hague Convention are rapidly being moved towards implementation. On October 29, 2003, a meeting was held in Washington, DC to review comments. However, a very short notice was given, and many agencies did not know about it or were unable to make travel arrangements in order to attend. I recently received my agency license this summer and will most likely be forced to shut down my agency before it starts due to these imposing rules.

These proposed rules may violate The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). This act is to give small businesses an avenue to participate in and have access to the federal regulatory arena. **The 1980 Regulatory Flexibility Act (RFA) requires agencies to take steps in collecting input from small entities on regulations and to determine whether a rule is expected to have a significant economic impact. These rules clearly do not favor small or new adoption agencies and inhibit the ability for new, start-up agencies in the future. It clearly favors, established, large adoption agencies.**

These proposed rules are detrimental to adoption agencies, parents seeking to adopt, and adoptive children living in foreign countries for the following reasons:

Adoption Agencies:

The rules proposed are excessive and restrictive for adoption agencies. Currently, to become an adoption agency, a license must be applied for under state regulations including applying for non-profit business status as well as complying to non-profit business laws. On top of these regulations, the Federal Government, through the Department of State is in the process of demanding excessive and restrictive regulations for non-profit businesses that will cause many agencies to close their doors resulting in the loss of jobs. Potentially, this will have the greatest impact on smaller agencies and new agencies. These regulations will not improve the chances of finding loving homes for orphaned children, world-wide and will cause a financial burden for the agency to operate. Listed below are some of the proposed regulations that are of great concern. This document is 57 pages long and I am sure I could have listed more:

\$1,000,000.00 Insurance policy per occurrence in favor of families must be carried by the adoption agency:

In researching this type of policy, three insurance agencies have told me that this type of insurance cannot be provided to protect what takes place on foreign soil. It was also indicated, that if it is possible for an insurance company to come up with some type of coverage, it will be prohibitive in costs, as a pool or history of occurrences is unknown and the risks would be categorized as high. ***Outside of the insurance industry, what other types of non-profits are required to carry insurance policies of this magnitude?*** The Department of State also admits that this provision may raise the cost of liability insurance and have an effect on civil litigation, which are sensitive requirements. This implies that they know they may overstepping their bounds by mandating such requirements.

Most small adoption agencies operate on very limited budgets as many are doing this work as their "life work" and being paid a small income in their sincere effort to help parents and children. For these agencies, **this type financial burden would have severe impact on their ability to operate.**

One agency in the state of Minnesota has provided humanitarian aid to orphanages in Russia for the past seven years. This agency has found families for over 60 orphans. The woman who has this agency operates on a shoe-string budget, often with no pay-check and has averaged about \$20,000 per year in personal income. She has indicated that she will not be able to continue if these rules are passed. For larger agencies, they will have no choice but to pass on these additional expenses to the parents, driving up the costs of adoptions.

This type of insurance also, encourages frivolous lawsuits. While there is a tight screening of parents, there are some parents who think that these children need to be perfect in every way and have rejected their referred child while blaming the agency. ***What will protect the agency in this case?*** As agencies, we educate and explain the many situations that parents may encounter. Unfortunately, some of these problems are caused by the emotions of adoption and agencies cannot predict the emotional impact that some parents may feel, even though every attempt has been made to prepare the parent.

Three months of operating income in the bank at all times;

Mandatory accreditation;

Temporary accreditation;

These rules may be in violation of the 1980 Regulatory Flexibility Act (RFA), which states that federal agencies must take steps to collect input from small entities on regulations and to determine whether a rule is expected to have significant economic impact on a substantial number of small entities. Moreover, federal agencies are required to identify alternative regulatory approaches for small businesses and non-profit organizations. ***How many agencies were notified of this meeting to review the proposed rules? Which agencies views were considered in the development of the rules? What was the size of the agencies represented?*** I am a new agency and did not receive notification.

Three-Month Income

Many adoption agencies are small and were created by parents who adopted and want to help others. As was mentioned before, many operate on shoestring budgets. The only income for many of them comes from a fee that is charged to the parents for processing the dossier, (which includes a multitude of documents), coordinating the adoption with the foreign entity, providing pre and post adoption education to parents, initial interviews with parents, providing information packets, being "on call" for the parents during the course of the adoption, etc.

What is the purpose of the government demanding 3 months of operating income in the bank at all times? How will this help to expedite the placement of children or protect parents? This will be a hindrance to small and start-up agencies and clearly favors large agencies.

Mandatory Accreditation

Fees for mandatory accreditation will be charged to the adoption agency. The rules do not specify the amount, but it is clear that a fee will be established and the adoption agency will be responsible for this fee and any travel expenses incurred. Again, this is a financial burden on non-profits and these costs will need to be passed on to the parents. ***What other types of non-profits must comply with mandatory accreditation? Why does it need to be mandatory when the accreditation process will be done every four years? What is the validity of a re-accreditation process that only occurs every four years? Why does a web site need to be updated at taxpayer's expense every quarter if the re-accreditation process occurs every four years?***

This was voluntary in the past and should remain voluntary. Russia passed laws forbidding any foreign adoption agency that hadn't performed adoptions for five years to be unable to perform adoptions within their country. Unfortunately, this means that agencies were selected based on their longevity and not on their performance. ***Does the US only want agencies that can afford accreditation and can meet longevity requirements?*** Many of the smaller agencies have started based on the need to provide better services.

Temporary Accreditation

While these rules attempt to address the 1980 Regulatory Flexibility Act (RFA), they fall short. According to the proposed rules, the definition of a temporary accreditation states that it is an agency that has been accredited on a temporary basis by an accrediting entity.

The criteria for an agency seeking temporary accreditation is, that they must be a non-profit licensed by State law to provide adoption services at least in one state; it is and for the last three years prior to the TAD has been providing inter-country adoption services; it has the capacity to comply with the Department's and the accrediting entity's reporting requirements, and has not been involved in improper conduct related to providing inter-country adoption services.

First, how can a new agency comply with the three-year rule? This restricts any new agencies from becoming accredited and forces them into sponsorship by a larger, established agency and paying fees to a larger agency in order to be sponsored. Again, this **clearly favors larger agencies and restricts the start-up of new agencies.**

Second, the proposed rules imply that the temporary accreditation was the Department's way of helping small agencies in a phased-in approach and to avoid disqualifying small community based agencies from providing services. However, this temporary accreditation will only be given provided there is comprehensive plan for applying and achieving full accreditation. (96.96) The temporary accreditation is only valid for one year. The **Department also estimates that the vast majority of these adoption service providers are small entities under the RFA and that the rule will have impact on a substantial number of small entities.** The Department does not see this as a problem as they think that the small entities will be able to operate under a sponsor. ***First, how much does the Department anticipate that a Sponsor will charge a small entity to accept their risk? Also, how many larger agencies will be willing to accept this risk?*** Clearly, the Department does not understand what they are suggesting to the smaller entities, and again placing financial burden upon them.

How Parents and Children are affected:

When seeking adoption, many parents have experienced emotional suffering due to infertility. On top of this they suffer, the financial burden of paying for an adoption in order to have a family, versus the parent who has a natural born child. I know this, because I speak from personal experience of the pain of infertility and the joy of adopting three beautiful children from Russia. Parents don't need additional, frivolous costs added to an already expensive process. The average cost of adopting an infant in a foreign country is \$18,000 to \$30,000 in up-front fees. Many of these costs are imposed by the foreign entity. This only includes the cost of getting the child and does not include the travel or the medical and typical costs of raising a child once returning home. There is no question that these rules will add to a parent's burden. The end result will be fewer children adopted. ***How will these rules increase the quality of adoptions, overall?***

Presently, middle-class parents can hardly afford these adoptions. Many of the fees the parents have to pay include the INS fees, which have risen, translation costs of documents, authentication, and notarizing of paperwork, etc. When it is estimated the 500 million children worldwide are living on the streets or living in orphanages without families, we should be making it easier to adopt these children rather than adding to the difficulty.

Non-profit adoption agencies have enough restrictions imposed upon them by the States in which they operate. More regulations do not necessarily mean better services.

This past summer, I started an adoption agency, called Special Connections International. My intent was to try to connect as many parents and children as possible in Eastern Europe and for people to experience the joy we had experienced with our adopted children. In the State of

Minnesota, the cost of the license has risen from \$67.00 to \$400.00 this year. Every two years I am required to have a state audit that costs \$2000 - \$3000 regardless of the adoption activity. These are only a few of the costs my agency must pay on top of typical business expenses making it very difficult to keep afloat as a non-profit. Being an adoption agency doesn't mean that people are beating on your door to adopt. As an agency, I am concerned about finding the right parents to ensure that children who have lived in undesirable circumstances can grow up in loving and stable environments.

I respectfully ask, that you take into consideration what I have written and make the accreditation process voluntary so that adoption agencies can aspire to this accreditation, and don't go out of business in spite of it.

Best regards,



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